

# HCBS Provider Policy Update & Training

## Frequently Asked Questions (FAQs)

July 20, 2015

1. Where are the slides posted on the KDADS website?

Presentations from the Provider Update/Policy Training can be located under HCBS Informational Meetings on the HCBS Provider Updates/Policy Training July, 2015 at the following link: [http://www.kdads.ks.gov/commissions/csp/home-community-based-services-\(hcbs\)/hcbs-educational-summits/hcbs-provider-updates-policy-training-july-2015](http://www.kdads.ks.gov/commissions/csp/home-community-based-services-(hcbs)/hcbs-educational-summits/hcbs-provider-updates-policy-training-july-2015)

2. Capable Person/Conflict of Interest: How does designated representative work if a consumer has co-guardians?

If the co-guardians are paid or want to be paid to provide services to the consumer, then all conflict of interest must be mitigated. In order to mitigate the conflict of interest, the co-guardians may elect to petition the Court to determine if a conflict of interest exists. The court must provide an issue that the co-guardians do not have a conflict of interest before the co-guardians can be reimbursed for the provision of services. The co-guardians may also choose to appoint a Designated Representative to complete the self-directed tasks on behalf of the co-guardians. The Designated Representative can hire, fire, manage, train, and monitor the services provided by the direct service worker. If conflict of interest has not been mitigated and the co-guardians do not want to appoint a designated representative, then the guardian must hire a worker to provide the self-directed services or elect to agency-direct the services on behalf of the consumer.

3. Does the consumer have to designate a representative if the court has provided a statement that there is no conflict of interest?

A consumer or legal guardian does not have to designate a representative if the guardian has been determined by the courts that all conflict of interest has been mitigated.

4. Would a letter with a stamp from the judge be sufficient to determine that there is not a conflict of interest?

The guardian must provide a court order from the judge in order to be reimbursed for provision of services. The consumer's selected Managed Care Organization (MCO) will not authorize payment to a legal guardian unless a copy of the court order or designated representative form is on file.

5. What date should be put on the designated representative form?

The date on the designated representative form should reflect the date the form was completed by the consumer or legal guardian.

6. For self-direction purposes, does the type of Durable Power of Attorney (financial versus medical) impact conflict of interest?

The State will review for any activated Durable Power of Attorney, regardless of the type, to determine if a conflict of interest exists.

7. Is it the State's plan to continue with the Designated Representative Form if it is approved?

The State has implemented the Designated Representative Form to demonstrate compliance with CMS regulations related to Conflict of Interest.

8. Would a guardian continue to be permitted to be reimbursed for providing services if conflict of interest has not been mitigated?

A guardian that does not have a court order stating that all conflict of interest has been mitigated will not be reimbursed for the provision of services. The guardian must appoint a Designated Representative or hire a worker to provide the self-directed services.

9. How will the Financial Management Services (FMS) provider know if a capable person has refused to provide assistance to the consumer?

The consumer's selected managed care organization must document any refusal to provide assistance from a capable person in the consumer's Integrated Service Plan (ISP).

10. Adverse Incident Reporting (AIR): Is there a place of explanation for what is an adverse incident?

In March 2013, a memorandum for required reporting of AIR was issued, in this memo an adverse incident is described as a "serious occurrence" requiring immediate reporting (e.g. preventable death, physical abuse, inappropriate sexual contact, misuse of medications). HCBS Commission is working with legal to revise the definition from the initial list provided in March 2013. The revised definition of incidents will be posted on KDADS website.

11. Who is responsible for submitting the AIR report if there are two separate providers?

It is the KDAD's expectation that both providers would submit an AIR report as each provider may have different information pertinent to the AIR report.

12. Does a Targeted Case Manager (TCM) need to report an adverse incident into the AIR system?

Yes, Targeted Case Managers who have knowledge of an adverse critical incident is required to report the incident.

13. What is the review process by the State once a report has been submitted?

AIR reports submitted to the State are reviewed by KDADS Program Integrity & Compliance (PIC) staff. The PIC staff is responsible for reviewing all AIR reports to determine whether additional follow up is necessary. If additional follow up is necessary, the PIC staff will make referrals to appropriate parties (e.g KDADS Licensing or Quality staff, MCO or the reporter) to conduct further follow ups. The PIC staff is responsible for ensuring all necessary follow up are exhausted prior to closing the case.

14. Does that MCO have access to AIR reports?

Yes, the MCO may access the AIR system to submit adverse critical incident reports.

15. Does this have to be resubmitted to our CDDOs?

16. The Community Developmental Disability Organizations (CDDOs) is responsible for submitting known critical incident into the AIR system as a mandated reporter. If this inquiry is for the purpose of complying with the terms of the CDDO affiliation, please contact the CDDO for guidance.

17. Can we print something that has already been submitted?

An individual currently has permission to print an AIR report that was submitted but does not have the capacity to make any revisions or corrections to the report following submission. In order to make any revisions or corrects, the provider would be responsible for submitting a new AIR report.

18. Do we get something if it's resolved?

The State does not submit letters relating to the resolution to the providers. At this time, a provider must contact KDADS to request information regarding the State's determination on the AIR report.

19. What if it's a parent who tells me about an expected hospitalization?

The Adverse Incident Reporting (AIR) system is designed for reporting of adverse incident. If an expected hospitalization is not listed on the list of reportable incident, reporting of this incident does not need to be submitted to the AIR system.

20. Who does the AIR report if someone lives in their home with just the mom or something?

The person who has knowledge of the incident is responsible for submitting the report as a mandated reporter.

21. Who has access to view any reports submitted into the AIR system?

Once changes go through only KDADS will be able to view submissions

22. Can an agency view all AIR reports submitted by agency employees?

At this time, AIR reports are not available to agencies/individuals outside of the KDADS agency.

23. Can you describe elopement?

Elopement – Generally, it is an unplanned departure from an inpatient unit or facility where a consumer leaves without prior notification or permission or staff escort.

Elopement is further expanded for the IDD population to include frequency “**Running/wandering away** - repeatedly and deliberately or inadvertently leaving program area, group activity or living area and requires staff support to insure the persons’ health and safety.” The frequency of these incidents should be identified in the BASIS assessment.

*For the purpose of reporting to AIR, the definition of critical incidence should be followed to determine whether an incidence is reportable.*

24. Quality Assurance: How will the State monitor quality for larger providers (such as IDD day and residential)?

KDADS monitor quality by conducting a sample record (desk) review and/or on-site provider review as part of the quality assurance process. This process includes, review of the Authenticare system for potential Medicaid Abuse and the Managed Care Organizations.

25. Will the State complete on-site Quality reviews?

Please see response in #24 above.

26. Who is responsible for ensuring that provider claims are being paid in a timely manner?

The MCOs are responsible to ensure timely payment of services.

27. Would it be possible for the CDDO to be notified for IDD providers that are found noncompliant?

KDADS request the inquirer to resubmit the question to [hcbs-ks@kdads.ks.gov](mailto:hcbs-ks@kdads.ks.gov) and provide additional clarification to the question.

28. Can an individual access Medicaid if he or she has been convicted of Medicaid Fraud?

Under the Exclusion Statute, the OIG must exclude from participation in all Federal health care programs providers and suppliers convicted of:

- i. Medicare fraud;
- ii. Patient abuse or neglect;
- iii. Felony convictions related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care item or service; or
- iv. Felony convictions for unlawful manufacture, distribution, prescription, or dispensing of controlled substances.

29. Financial Management Services (FMS): Can the FMS providers get a hard copy of the readiness review/checklist prior to the review?

The FMS providers will receive a readiness review notification letter 10 business days prior to the onsite visit from KDADS staff.

30. Background Checks: Is the new KDADS criminal background check process intended for only FMS providers, required for all providers, or an option?

The Criminal Background check process will apply to all HCBS program and services where background check, including APS/CPS and Motor vehicle is required to be completed. The background check is a component of a service provider's qualification requirement.

31. When a consumer ages out of the Technology Assisted (TA) program, is the cost of their equipment covered by general Medicaid funds?

If the consumer remains Medicaid eligible, the cost of equipment may be authorized and reimbursed by the consumer's managed care health plan.

32. Has the State discussed changes to the MR1 form since the form indicates that the consumer has the choice between HCBS and ICF-IID? ICF-IID isn't a real option until it is considered the "least restrictive, most appropriate" setting.

KDADS will take this inquiry into consideration and further review.

33. Are the private ICF-IID facilities being closed?

KDADS continue to re-license private ICF-IID. The list of ICF-IID facilities can be found on the KDADS website. (add weblink)

34. Does a consumer have to have an intellectual disability in order to qualify for the ICF-IID facility?

Yes.

35. Should the Community Developmental Disability Organizations (CDDO) highlight military inclusion information during the eligibility process?

Military inclusion may be presented as an option for qualifying consumers seeking access to services on the IDD program.

36. Would a child be eligible for military inclusion if the child was on the IDD waitlist and his or her parent retired from the military?

Please review the proposed policy for additional information regarding proposed Military Inclusion Policy.

37. How should a situation be handled if a child was on services in another state and the family moved to Kansas and expressed an immediate need for services?

KDADS is requesting further clarification as to which program the inquirer is speaking of and to resubmit the question through the [hcbs-ks@kdads.ks.gov](mailto:hcbs-ks@kdads.ks.gov) mailbox.

38. Has the Personal Care Services (PCS) definition been standardized across all waivers?

Personal Care service has been standardized across FE, IDD, PD, TBI in the renewal submitted for CMS approval. The reference to personal care on other programs with attendant care services will be standardized as programs are amended or renewed.

39. Has there been any change to the name of the worker providing Personal Care Services (PCS)? They were previously called Attendant Care Provider, Direct Service Worker, Personal Attendant, etc.

Please see # 38.

40. What are the Managed Care Organizations (MCOs) calling an individual receiving services on a HCBS program?

MCOs refer to individuals receiving KanCare benefits as members.

41. Is there a way to identify if someone on the Physical Disability (PD) program also has mental health concerns that need addressed? What would be the process?

We expect the eligibility Assessor will complete a reasonable indicator screening during the intake to screen for other conditions or disabilities as part of the functional eligibility determination process.

42. Will military inclusion be included in the IDD Crisis Policy and Process?

The process for making a referral to KDADS for request for program access will be included in the military inclusion policy in future revisions.

43. How does an exception request differ from a crisis request?

Exception request apply to persons with specific circumstances. IDD Crisis Exception policy will be posted 8/1/15.

44. Will a provider be expected to cover the cost of background checks for any employee hires between now and policy implementation?

HCBS providers must be qualified to provide services in accordance with the background check policy. Evidence of compliance must be available to KDADS upon request. Employers are responsible for establishing internal policies and procedures for conducting background checks, including addressing the cost of the background checks.

For self-directed employers, the cost of the background check is the responsibility of the self-directed service provider.

45. When are providers required to start implementing the background check policy?

Enforcement of the background check requirement is subject to the 30days public comment period for the proposed Background Check policy posted for public comments and KDADS system readiness. The link to this policy can be found at the following weblink: [http://www.kdads.ks.gov/commissions/csp/home-community-based-services-\(hcbs\)/hcbs-policies](http://www.kdads.ks.gov/commissions/csp/home-community-based-services-(hcbs)/hcbs-policies)

KDADS will communicate effective date of enforcement via email listserve. If you have not done so, please join the KDADS email listserve.

46. Are these background checks the same as the checks used in the past?

No, juvenile checks were not ran along with pending charges. Prohibited offenses. Requirements were expanded on several waivers.

47. Will the providers be given a transition period to have all background checks completed once the policy and process are implemented?

Yes.

48. Is the background check system limited to convictions in Kansas?

Yes. KBI criminal record check is limited to convictions in Kansas. However, in the event it is known that a potential employee resided previously in other states, KDADS recommends employers conduct background check information from the state the employee resides or worked in.

49. Does the background check system link with the OIG registry?

No, it does not.

50. Will the background check requirements apply to current employees?

Yes.

51. What will happen if a Direct Service Worker's background check has verified prohibited offenses but the consumer is choosing to self-direct services?

If a consumer knowingly hires a worker that has been convicted of one of the prohibited offenses, then the consumer could lose the option of self-direction.

52. What role does the Financial Management Services (FMS) play in Person Centered Planning?

They are not part of the PCP but should provide information regarding PCP to consumer/legal guardian.

53. Can a FMS provider obtain a copy of the Information and Assistance (I&A) an MCO provides to the consumer?

KDADS will follow up with the MCOs.

54. Who is responsible for obtaining the Federal Employment Identification Number (FEIN)?

The consumer, guardian, or designated representative is responsible for obtaining an FEIN. FMS should provide information and assistance in obtaining this.

55. What happen when a consumer repeatedly terminates employees? Impact on FMS worker unemployment rate.

KDADS would like clarification as to the inquirer's question, please resubmit to [hcbs-ks@kdads.ks.gov](mailto:hcbs-ks@kdads.ks.gov)



56. Can the system be designed to provide a budget for the consumer that automatically removes worker's compensations and unemployment (similar to WORK program design)?

KDADS at the request of stakeholders have implemented the FEA model and will not be pursuing the budget authority at this time.

57. How should a provider submit a death report?

Death reports may be submitted as an AIR report to KDADS.

58. Is a provider responsible for submitting all death reports or specifically unexpected death reports into the AIR system?

Yes. KDADS reviews all reports submitted to AIR. A determination will be made upon completion of the review.

59. Does this policy override the current death report policy for IDD? (We negotiated that all we need to do is the IDD notification form and mark KAMIS as deceased.)

Mandated reporters are required to submit critical incidents through the KDADS system of record (AIR). The IDD notification form may be submitted (uploaded) through the AIR system in lieu of sending via email, fax or snail mail.

60. Can a provide get verification of whether a report has been screened in or out from the protective services?

KDADS cannot share reports, APS/CPS will notify the parties who need to know the information.

61. How is the MCO notified of the submission of a death report?

The MCO is responsible for informing its provider of reporting requirements relating to death of its members.

62. Can an attendant under the age of 18 years provide HCBS services?

Potential employees under the age of 18 with a high school diploma may provide HCBS services.